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NATIONAL SEATING & MOBILITY, INC.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL SEATING & MOBILITY, INC.,
Plaintiff,
vs.
MICHAEL PARRY and DOES 1 through 20;
inclusive,
Defendants.

MICHAEL PARRY, individually and on behalf
of all others similarly situated,
Cross-Complainant,
vs.
NATIONAL SEATING & MOBILITY, INC.,
Counter-Claim Defendant.

Case No.: 3:10-cv-02782-EMC
**ORDER DENYING WITHOUT PREJUDICE
STIPULATION FOR PROTECTIVE ORDER
PROHIBITING DISCLOSURE OF
MATERIAL DESIGNATED BY PARTIES AS
CONFIDENTIAL; ~~ORDER THEREON~~**

To facilitate discovery, it is hereby stipulated by and between the parties hereto, by and through their respective counsel of record, Wilson, Elser, Moskowitz, Edelman & Dicker LLP representing National Seating & Mobility, Inc. ("NSM") and Mark P. Meuser representing Michael Parry ("Parry"), subject to the order of the court, as follows:

1 **1. Non-disclosure of Confidential Documents.** Except with the prior written consent
 2 of the party designating a document as confidential, or as hereinafter provided under this order, no
 3 confidential document may be disclosed to any person. "Disclosure" is intended to be interpreted
 4 broadly, and means (1) copying (including hand-written copies), exhibiting, showing,
 5 communicating, describing, allowing access to, or otherwise releasing to any person, (2) the
 6 documents subject to this order, or any of these documents' content, except as expressly authorized
 7 by this order.

8 Any party may, in good faith, designate as "confidential" or "proprietary" any material
 9 produced in this action, including documents, answers to Interrogatories or other responses to
 10 discovery requests and portions of any deposition or deposition exhibits.

11 The parties may designate materials as confidential or proprietary by either writing, typing or
 12 stamping the word "confidential" or "proprietary" or words to that effect on the face of the materials,
 13 or by written notice to counsel for the opposing party, before or at the time of production of the
 14 materials to counsel for the opposing party, including the description of the materials to be
 15 designated as "confidential" or "proprietary." Such written notice must sufficiently describe the
 16 confidential materials to distinguish them from other materials produced or available in this action.

17 The special treatment accorded to the confidential documents shall reach at minimum:

- 18 a. all copies of confidential documents;
- 19 b. all extracts, and complete or partial summaries prepared from such
 20 documents;
- 21 c. any deposition transcript or exhibit, or portion thereof, that discusses or refers to such
 22 documents, copies, extracts, or summaries; and
- 23 d. any portion of any discovery answer or response, affidavit, declaration, brief, or other
 24 paper filed with the Court, or exhibit thereto, that discusses or refers to such
 25 documents, copies, extracts or summaries.

26 **2. Permissible Disclosures.** Notwithstanding paragraph 1, confidential documents may
 27 be disclosed to the parties to this action, counsel of record for the parties in this action and such
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1 counsel's employees to the extent reasonably necessary to render professional services, and to court
 2 officials involved in this litigation. Such documents may also be disclosed:

3 (a) to any person designated by the court in the interest of justice, upon such terms as the
 4 court may deem proper; and

5 (b) to persons noticed for depositions or designated as trial witnesses to the extent
 6 reasonably necessary in preparing to testify or testifying; to outside consultants or experts retained
 7 for the purpose of assisting counsel in the litigation; to employees of parties involved solely in one
 8 or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing
 9 programs for handling data connected with these actions, including the performance of such duties in
 10 relation to a computerized litigation support system; and to employees of third-party contractors
 11 performing one or more of these functions; provided, however, that in all such cases the individual to
 12 whom the disclosure is to be made has signed a form containing:

13 (1) a recital that the signatory has read and understands this order;

14 (2) a recital that the signatory understands that unauthorized disclosures of the
 15 confidential documents constitute contempt of court; and

16 (3) a statement that the signatory consents to the exercise of personal jurisdiction
 17 by this court.

18 (4) if a disclosure is made during a deposition, the witness to whom the disclosure
 19 is made shall be advised of the existence of this stipulated order.

20 (c) Before disclosing a confidential document to any person listed in subparagraph (a) or
 21 (b) who is a competitor (or an employee of a competitor) of NSM, the party wishing to make such
 22 disclosure shall give at least 10 days' advance notice in writing to the counsel who designated such
 23 information as confidential, stating the names and addresses of the person(s) to whom the disclosure
 24 will be made, identifying with particularity the documents to be disclosed, and stating the purposes
 25 of such disclosure. If, within the 10-day period, a motion is filed objecting to the proposed
 26 disclosure, disclosure is not permissible until the court has denied such motion. The court will deny
 27 the motion unless the objecting party shows good cause why the proposed disclosure should not be
 28 permitted. A competitor of NSM is defined as a company or other entity that provides customized

1 wheelchairs and adaptive seating systems for individuals who have been diagnosed as having a
2 permanent or long-term loss of mobility.

3 **3. Declassification.** Any party may apply to the court for a ruling that a document (or
4 category of documents) designated by the producing party as confidential is not entitled to such
5 status and protection. The producing party that designated the document as confidential shall be
6 given notice of the application and an opportunity to respond and shall bear the burden of
7 establishing good cause for the claimed confidentiality.

8 **4. Confidential Information in Depositions.**

9 (a) A deponent may, during the deposition, be shown and examined about confidential
10 documents if the deponent is or was an employee of the counter-claim defendant and already knows
11 the confidential information contained therein, or if the provisions of paragraph 2(b) and (c) are
12 complied with. Deponents shall not retain or copy portions of the transcript of their depositions that
13 contain confidential information not provided by them or the entities they represent unless they sign
14 the form prescribed in paragraph 2(b). A deponent who is not a party or an employee, agent or
15 representative of a party shall be furnished a copy of this order before being examined about, or
16 asked to produce, potentially confidential documents.

17 (b) Parties (and deponents) may designate portions of the transcript, or exhibits thereto,
18 as being "confidential." At the deposition, the parties will attempt in good faith to preliminarily
19 identify and designate "confidential" testimony and exhibits without prejudice to their right to so
20 designate other testimony or exhibits or withdraw such designation after receipt of the transcript.
21 Confidential deposition testimony or exhibits may be so designated by stamping the exhibits
22 "confidential," or by underlining the portions of the pages that are confidential and stamping such
23 pages "confidential." Parties may designate portions of the transcript that are confidential, the entire
24 deposition transcript, and all exhibits thereto, which will be treated as "confidential" under the
25 provisions of this Order. Once a "confidential" designation is made, the confidential portions and
26 exhibits shall be sealed separately from the portions and exhibits not so marked, and shall be treated
27 as "confidential" under the provisions of this Order. Parties shall have 30 days from receipt of a
28 transcript to notify opposing party of portions of the transcript it designates to be "confidential." If

1 parties do not designate portions of the transcript confidential within 30 days after receipt of such
2 transcript, the transcript will no longer be deemed confidential.

3 **5. Confidential Documents in Papers Filed With the Court.** Documents designated
4 "confidential," and all information contained therein or derived there from, may be discussed or
5 referred to in pleadings, motions, affidavits, briefs and other papers filed with the Court, or attached
6 as exhibits thereto, provided that such "confidential" documents and information, and any portion of
7 any paper filed with the Court that discusses or refers to them, are stamped "confidential" and
8 separately filed under seal.

9 **6. Confidential Documents in Court.** Documents designated "confidential," and all
10 information contained therein or derived therefrom, may be used or offered in evidence at the trial of
11 this case, or at any court hearing in this litigation, provided that (a) the proponent of the evidence
12 gives five days' advance notice to counsel for the party or other person that designated the
13 information as confidential; and (b) the "confidential" documents and information, and any portion
14 of any transcript or court paper where they are discussed or referred to, are stamped "confidential"
15 and separately filed under seal. Any party may move the court for an order that the evidence be
16 received in camera or under other conditions to prevent unnecessary disclosure. The court will then
17 determine whether the proffered evidence should continue to be treated as confidential information,
18 and if so, what protection, if any, may be afforded to such information.

19 **7. Use.** Persons obtaining access to confidential documents under this order shall use
20 the information only for preparation and trial of this litigation (including appeals and retrials), and
21 shall not use such information for any other purpose, including business, governmental, commercial
22 or administrative or judicial proceedings. If any materials designated as "confidential" or
23 "proprietary" are submitted to the Court for filing prior to trial, that material will be filed under seal
24 to preserve confidentiality.

25 **8. Confidential Designation Subsequent to Production.** In the event that materials
26 are produced herein, which in the party's opinion should have been, but were not, designated as
27 "confidential" or "proprietary," such party may designate such material as "confidential" or
28 "proprietary" by notifying counsel for all other parties of this designation as soon as possible. Upon

1 receipt of such notification, all parties shall treat such material as confidential and shall make
2 reasonable efforts to recall any material which had already been distributed in a manner inconsistent
3 with the terms of this Order.

4 **9. Retention of Confidential Documents.** Upon request, all “confidential” and /or
5 “proprietary” materials disseminated pursuant to this Order and all copies thereof, other than those
6 filed with this Court, shall be returned to counsel of the producing party at the conclusion of this
7 litigation; except that copies bearing attorney notes or markings reflecting the thoughts of counsel
8 shall be destroyed and verification of that destruction shall be provided to counsel for the party
9 producing the materials. Cross-complainant’s counsel may retain one copy of such materials for
10 their files that will remain confidential and subject to the terms of this stipulation. To the extent
11 “confidential” and /or “proprietary” materials disseminated pursuant to this Order are maintained in
12 an electronic format, cross-complainant’s counsel represents that the materials will not be forwarded
13 or distributed for any purpose and will remain confidential and subject to the terms of this stipulation

14 **10. Modification Permitted.** Nothing in this order shall prevent any party or other
15 person from seeking modification of this order or from objecting to the confidential designation or to
16 discovery that it believes to be otherwise improper.

17 **11. Non-Termination.** The provisions of this order shall not terminate at the conclusion
18 of this action. Within 120 days after final conclusion of all aspects of this litigation, confidential
19 documents and all copies of same (other than exhibits of record) shall be returned to the person or
20 entity that produced such documents or, at the option of the producer (if it retains at least one copy
21 of the same), destroyed except that all parties may maintain one hard copy or an electronic copy for
22 their files. All counsel of record shall make certification of compliance herewith and shall deliver
23 the same to counsel for the party who produced the documents not more than 150 days after final
24 termination of this litigation.

25 **12. Responsibility of Attorneys.** The attorneys of record are responsible for employing
26 reasonable measures, consistent with this order, to control duplication of, access to, preservation of,
27 and distribution of copies of confidential documents. Parties shall not duplicate any confidential
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document except working copies or copies intended for filing in court under seal and service upon other parties.

13. No Waiver.

(a) Review of the confidential documents and information by counsel, experts, or consultants for the litigants in the litigation shall not waive the confidentiality of the documents or objections to production.

(b) The inadvertent, unintentional, or in camera disclosure of confidential documents and information shall not, under any circumstances, be deemed a waiver, in whole or in part, of any party's claims of confidentiality.

(c) Nothing contained in this protective order and no action taken pursuant to it shall prejudice the right of any party to contest the alleged confidentiality, relevancy, admissibility, or discoverability of the confidential documents.

IT IS SO STIPULATED.

Dated: June 7, 2011

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP

By: /s/ Ronald Bushner

Ronald S. Bushner
Megan M. Lewis
Attorneys for Counter-Claim Defendant
NATIONAL SEATING & MOBILITY, INC.

Dated: June 7, 2011

MEUSER LAW GROUP, INC.

By: /s/ Mark P. Meuser

Mark P. Meuser
Attorneys for Counterclaimant
MICHAEL PARRY

ORDER

~~IT IS SO ORDERED.~~ The parties' stipulation is DENIED WITHOUT PREJUDICE to submitting a proposal that complies with the requirements of Local Rule 79-5.

Dated: June 8, 2011


Honorable Jeffrey S. White
UNITED STATES DISTRICT JUDGE